

PATENT APP. NO. 10/086,541

ATTY. DOCKET NO. 53394.000565

AMENDMENT IN RESPONSE TO 04/05/2005 OFFICE ACTION

III. REMARKS/ARGUMENTS

A. Status of the Claims

Claims 1-28 are pending in the application. Claims 5, 7-8, and 14-28 have been withdrawn from further consideration as being drawn to an unelected species. Claims 1-4, 6, and 9-13 stand rejected by the Examiner. By this amendment claim 1 is amended. No new matter is added. Applicant respectfully requests reconsideration of the rejections of claims 1-4, 6, and 9-13 for at least the following reasons.

B. Claim Rejections

1. Claim Rejections under 35 U.S.C. § 102

Claims 1-4, 6, and 9 stand rejected under 35 U.S.C. § 102(b) as being anticipated by, U.S. Patent No. 5,370,634 to Ando, *et al.* ("Ando"). The Applicant respectfully traverses this rejection and requests reconsideration and allowance of the pending claims in view of the following remarks.

A claim is anticipated by a reference only if "each and every element as set forth in the claim is found, either expressly or inherently described" in the reference.

Verdegaal Bros v. Union Oil Co. of California, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The Office Action alleges that Ando teaches every element of independent claim 1. However, the Applicant respectfully submits that Ando does not expressly or inherently disclose an absorbent article having a side seam that intersects the waist opening at a first non-parallel seam angle relative to the vertical axis and intersects one of the leg openings at a second seam angle relative to the vertical axis, as recited in amended claim 1.

Claim 1 has been amended to recite an absorbent article having a side seam that intersects the waist opening at a first non-parallel seam angle relative to the vertical axis and intersects one of the leg openings at a second seam angle relative to the vertical axis. Support for this amendment may be found in the Specification, for example at

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page 32, lines 20-22; no new matter is introduced with this amendment. The "side seam" of the absorbent garment (item 630 of Figure 17) is the portion that joins the front and rear side portions of the absorbent article. The term "seam" is defined as "an area of contact between two surfaces wherein the contact is maintained by a mechanical, chemical, adhesive or other type of bond formed along a substantially continuous path." Specification, page 11, lines 3-5. Figure 17 shows an absorbent article with a side seam having a portion (636) defining a seam angle θ_s relative to the vertical axis (602). Specification, page 34, lines 6-7. The "vertical axis" is defined as corresponding generally to a "head-to-toe axis of a standing wearer" and is orthogonal to the lateral axis, shown as element 602 in Figure 17 (and, thus, parallel to the longitudinal axis of the product). Specification, page 33, lines 1-4.

Ando discloses an absorbent article having elastic expansible members in the side portions of the front and rear waist regions, fixed together at the side edges to form a waist opening and a pair of leg openings. Ando, col. 2, lines 36-48. At least a portion of the side edges remain unconnected, with a vertical split portion separating the front waist portion from the rear waist portion, and fasteners are provided at the vertical split portion. *Id.* In one embodiment of Ando, the vertical split is formed starting from the leg openings, and ending mid-way to the waist opening, and the edges of the side portions are fixed together from the mid-way point to the waist opening. *Id.* at col. 6, lines 49-57, and Figs. 4 and 5. In this embodiment, the fasteners are joined to the fixed portions, rather than the split portions. *Id.*

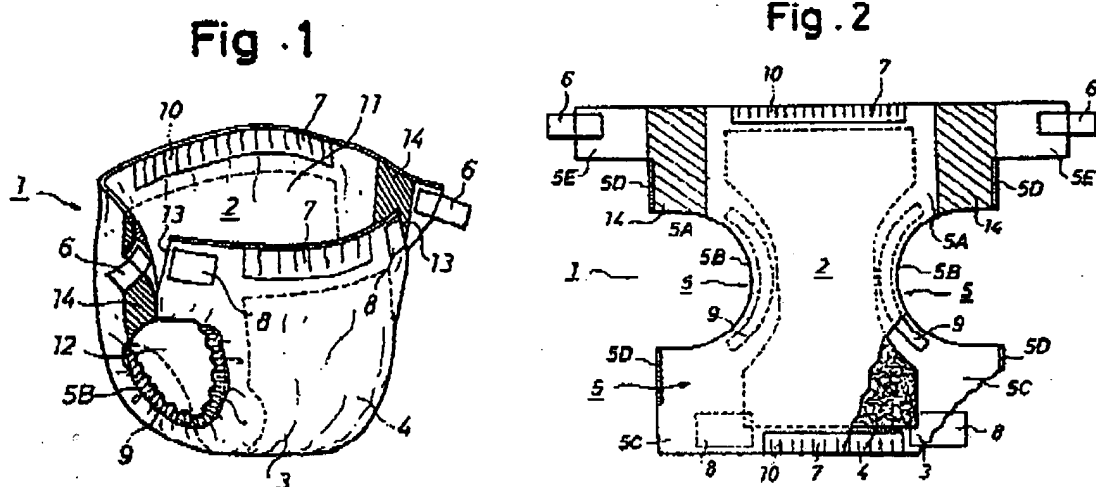
However, the Applicant respectfully submits that Ando does not disclose an absorbent article having a side seam that intersects the waist opening at a first non-parallel seam angle relative to the vertical axis and intersects one of the leg openings at a second seam angle relative to the vertical axis, as recited in claim 1. The Applicant respectfully submits that in all of the embodiments disclosed in Ando, the side seam bonds are parallel to the vertical axis of the absorbent garment, and not at an angle to the vertical axis. For example, the Office Action alleges that Figure 1 shows an

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absorbent article with side seams at an angle to the vertical axis. Figure 1 and Figure 2 (which is a plan view of the embodiment of Figure 1) are reproduced below for the Examiner's convenience.



As shown in Figure 2, the portions of the diaper corresponding to the side seams of the present invention are elements 5D, 5D ("connected portions" - Ando, col. 4, ll. 52-58).

The side seam portions connect the side panels only in the regions that are adjacent the leg opening (item 12 in Figure 1), and extend mid-way up the side panels. The side panel portions that are adjacent the waist opening (items 5C, 5C in Figure 2) are not bonded to each other, being separated by vertical split portion (item 13 in Figure 1).

Thus, the vertical split is not a part of a "side seam" as recited in claim 1 of the present application. As shown in the spread out view of Figure 2, the side seams (items 5D, 5D in Figure 2) are parallel to the vertical axis of the absorbent garment. Likewise, in each of the embodiments disclosed in Ando, the side seam bonds are parallel to the vertical axis. In other words, Ando does not disclose any side seam bond having a portion that is at an angle to the vertical axis.

In summary, Ando does not anticipate claim 1 because it does not disclose an absorbent article having a side seam that intersects the waist opening at a first non-parallel seam angle relative to the vertical axis and intersects one of the leg openings at

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a second seam angle relative to the vertical axis. Thus, the Applicant respectfully submits that claim 1, and claims 2-4, 6, and 9 which depend therefrom, are not anticipated by Ando. Therefore, the Applicant respectfully requests that the Examiner reconsider and withdraw these claim rejections, and allow the pending claims.

2. Claims Rejections under 35 U.S.C. § 103

Claims 10-13 stand rejected under 35 U.S.C. § 103(a) as obvious over Ando. The Applicant respectfully traverses this rejection and requests reconsideration and allowance of the pending claims in view of the following remarks.

With respect to claim 10, the Office Action specifically alleges that

The difference between Ando and claim 10 is the provision that at least one of the first and second side seam angles is in a range from about 10 degrees to about 80 degrees.

It would have been obvious to one of ordinary skill in the art to modify the side seam angle of Ando in order to provide the most effective product

Office Action, page 5. Three criteria must be met to establish a *prima facie* case of obviousness: (1) there must be some suggestion or motivation to modify the reference or to combine reference teachings, (2) there must be a reasonable expectation of success, and (3) the prior art references must teach or suggest all the claim limitations. See MPEP § 2142 *et seq.* Here, a *prima facie* case has not been established because Ando fails to teach or suggest all of the claim limitations — specifically, Ando does not teach or suggest an absorbent article having a side seam that intersects the waist opening at a first non-parallel seam angle relative to the vertical axis, as recited in the pending claims.

As discussed above, Ando discloses absorbent articles having side seams that are straight and parallel to the vertical axis. However, Ando specifically fails to disclose a side seam bond having a portion that is at an angle to the vertical axis. In direct contrast, the Applicant has disclosed that absorbent articles with side seams having an angled portion offer an improvement over conventional straight, vertical side seams.

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For example, the Applicant discloses that angled side seams "provide additional comfort and leakage security in wearers." Specification, page 32, lines 25-26. The angle of the side seam portion may be advantageously be designed "to accommodate different body types and sizes." Specification, page 34, lines 7-9. In addition, the angled side seam portion may allow the adjustment tab to be used to adjust the fit of the waist opening, without significantly affecting the fit at the leg openings. Specification, page 34, lines 18-26.

The Applicant respectfully submit that claims 10-13 are patentable over Ando because Ando fails to teach or suggest an absorbent article having a side seam that intersects the waist opening at a first non-parallel seam angle relative to the vertical axis and intersects one of the leg openings at a second seam angle relative to the vertical axis, as recited in the pending claims. Therefore, the Applicants respectfully request that the Examiner reconsider and withdraw these claim rejections.

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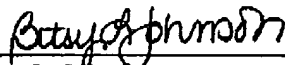
VII. CONCLUSION

The Applicant respectfully submits that the application is in condition for allowance. Applicant believes that no fees are necessary in connection with the filing of this document. In the event any fees are necessary, please charge such fees, including fees for any extensions of time, to the undersigned's Deposit Account No. 50-0206. Should any outstanding issues remain, the Examiner is invited to telephone the undersigned at the number listed below.

Respectfully submitted,
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Dated: July 5, 2005

By:


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